

Status: Point in time view as at 16/05/2019.

Changes to legislation: Mental Capacity Act 2005, Part 5 is up to date with all changes known to be in force on or before 18 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE AA1

DEPRIVATION OF LIBERTY: AUTHORISATION OF ARRANGEMENTS ENABLING CARE AND TREATMENT

Textual Amendments

- F1** Sch. AA1 inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 1](#)

PART 5

APPOINTMENT OF IMCA

Appointment of Independent Mental Capacity Advocate

- 41 (1) Paragraphs 42 and 43 apply to the responsible body at all times while arrangements are authorised or are being proposed.
- (2) In those paragraphs “IMCA” means an independent mental capacity advocate.
- 42 (1) The responsible body must take all reasonable steps to appoint an IMCA to represent and support the cared-for person if—
- (a) sub-paragraph (2) or (3) provides that an IMCA should be appointed, and
 - (b) sub-paragraphs (4) and (5) do not apply.
- (2) An IMCA should be appointed if the cared-for person—
- (a) has capacity to consent to being represented and supported by an IMCA, and
 - (b) makes a request to the responsible body for an IMCA to be appointed.
- (3) An IMCA should be appointed if—
- (a) the cared-for person lacks capacity to consent to being represented and supported by an IMCA, unless
 - (b) the responsible body is satisfied that being represented and supported by an IMCA would not be in the cared-for person’s best interests.
- (4) This paragraph does not apply if an IMCA has been appointed under this paragraph and the appointment has not ceased to have effect.
- (5) This paragraph does not apply if the responsible body is satisfied that there is a person (an “appropriate person”) who—
- (a) would be a suitable person to represent and support the cared-for person,
 - (b) consents to representing and supporting the cared-for person, and

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- (c) is not engaged in providing care or treatment for the cared-for person in a professional capacity.
- (6) A person is not to be regarded as a suitable person unless—
 - (a) where the cared-for person has capacity to consent to being represented and supported by that person, the cared-for person does consent, or
 - (b) where the cared-for person lacks capacity to consent to being represented and supported by that person, the responsible body is satisfied that being represented and supported by that person would be in the cared-for person's best interests.
- 43 (1) If the cared-for person has an appropriate person, the responsible body must take all reasonable steps to appoint an IMCA to support the appropriate person if—
 - (a) sub-paragraph (2) or (3) provides that an IMCA should be appointed, and
 - (b) sub-paragraph (4) does not apply.
- (2) An IMCA should be appointed if the appropriate person—
 - (a) has capacity to consent to being supported by an IMCA, and
 - (b) makes a request to the responsible body for an IMCA to be appointed.
- (3) An IMCA should be appointed if—
 - (a) the appropriate person lacks capacity to consent to being supported by an IMCA, and
 - (b) the responsible body is satisfied the appropriate person's being supported by an IMCA would be in the cared-for person's best interests.
- (4) This paragraph does not apply if an IMCA has been appointed under this paragraph and the appointment has not ceased to have effect.]

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